



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

URGENT

September 7, 1988

OGA FILE

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer -

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SUBJECT: Draft letter to Majority Leader and Speaker on Section 621 of Treasury, Postal Service and General Government Appropriations Bill, which would limit the President's ability to implement and enforce agreements restricting disclosure of classified material.

NOTE: The Conference report on this bill was filed on August 12, 1988.

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

A response to this request for your views is needed no later than 12:00 NOON, THURSDAY, SEPTEMBER 8, 1988. OBE

Questions should be referred to Annette Rooney/Sue Thau (395-7300), the legislative analyst in this office.

*Annette E. Rooney for*  
RONALD K. PETERSON for  
Assistant Director for  
Legislative Reference

Enclosures

cc: A.B. Culvahouse, Jr.  
A. Donahue  
B. Hannon

A. Raul  
E. Rea

URGENT

Honorable Jim Wright  
Speaker  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Mr. Speaker:

The Treasury, Postal Service and General Government Appropriations Bill for Fiscal Year 1989 contains in section 621 a provision limiting the ability of the President to implement and enforce agreements restricting the disclosure of classified materials by executive branch employees. This provision is identical to Section 630 of Public Law 100-202, the continuing resolution for fiscal year 1988, which was recently declared unconstitutional by the United States District Court for the District of Columbia. Because we believe this provision is both unconstitutional as a legal matter and unwise as a policy matter, we will recommend presidential disapproval of any bill that contains such a provision.

The Supreme Court has explicitly recognized the President's constitutional authority to protect national security information. In Department of the Navy v. Egan, 108 S.Ct. 818 (1988), the Court held that the President's "authority to classify and control access to information bearing on national security . . . flows primarily from [the] constitutional investment of power in the President [as Commander in Chief of the Army and Navy] and exists quite apart from any explicit congressional grant." Id. at 824. Section 621 would severely limit the President's ability to utilize nondisclosure agreements in furtherance of his constitutional authority to protect national security information and therefore unconstitutionally restrict the President's exercise of his Article II powers. As the district court concluded in ruling on an identical provision in this year's continuing resolution, section 621 would "permit the President to ensure the secrecy of national security information only by those means authorized by Congress" and thus "impermissibly restricts the President's power to fulfill obligations imposed upon him by his express constitutional powers and the role of the Executive in foreign relations." National Federation of Federal Employees v. United States, No. 87-2284-OG (D.D.C. May 27, 1988), slip op. at 30.

Besides being unconstitutional, this provision is profoundly unwise. Section 621 would severely hamper the President's ability to prevent unauthorized disclosure of classified information, including information on our most sensitive diplomatic, military, and intelligence activities. No nation can successfully function in the international arena if each of its employees is left free to decide for himself what information is to be disclosed outside the executive branch. Yet, section 621 would circumscribe the President's ability to control access to our nation's most sensitive secrets.

We urge that this provision be stricken from the bill in order to preserve the President's authority to protect information vital to our national security.

Sincerely,

George Shultz  
Secretary of State

Dick Thornburgh  
Attorney General

Frank Carlucci  
Secretary of Defense

William Webster  
Director of Central Intelligence

Colin Powell  
Assistant to the President  
for National Security Affairs